

REMARKS

This amendment is responsive to the Office Action mailed on October 7, 2010. The Examiner's comments in the Office Action have been considered.

Claims 1-25, 45-49, 123 and 124 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for reasons set forth in paragraph 4 of the Office Action. The basis for the Examiner's rejection is that the claims recite lifting devices 101 and 111. Referring to claims 1, 13 and 17, the Examiner has indicated that there are two species of lifting devices disclosed in the application. A first embodiment, designated by the reference numeral 101, is disclosed as being "arranged secured to the track bed", while the other embodiment, designated by the reference numeral 111, is disclosed as extending "outside of the rail tracks" on a roadway secured to the ground adjacent to the track bed. The Examiner has suggested, therefore, that while the scope of the claims is intended to cover both species, there is only support for the first species (101) in the specification. This rejection is respectfully traversed as, it is respectfully submitted, such interpretation of the locations of the lifting devices is incorrect and inconsistent with the disclosure, as more fully discussed below.

Both of the embodiments of the lifting devices (101,111) are located adjacent but outside the rails, and not between the rails. None of the lifting devices is located between the rails. This is clearly supported by paragraph [0066] and paragraph [0118] in connection with figures 14 to 16 and 19 to 25 of the published Application. Each of the figures shows that the lifting devices are located underneath the cars and directly adjacent to the rail outside the rail tracks. Furthermore it can be seen that the lifting devices are anchored to the track bed underneath the cars and directly adjacent to the rail outside the rail tracks. It is for that reason, it is submitted, that these two embodiments of the lifting

devices are supported by the application as filed and should be prosecuted in the subject application.

Further, while there is no direct support in the specification that the lifting devices are not supported directly by the rails, it is submitted that the teaching that the lifting devices are *directly anchored to the track bed* clearly implies that the lifting devices are not supported directly by the rails. This would be well understood to a person skilled in the art.

Because of the foregoing reasons it is respectfully requested that the request to remove the reference numeral “111” from the claims, be reconsidered, as the independent claims cover both embodiments as noted and are supported by the specification.

Additionally, the Examiner has rejected claim 123 because it recited that the lifting devices are “based on the wedge principle”. The phrase “based on the wedge principle” has been deleted from the claims by cancelling claim 123 without prejudice, although that phrase does refer to the second embodiment.

Concerning the definition of the “track bed”, applicant notes the following:

In general, the distance of the rails to the middle of the track is about 75 cm.

The wagons usually have a width of 3 m (or 2x1.5 m seen from the middle of the track).

In general, for a person skilled in the art a track bed not only comprises the railroad sleepers (having a width of 2.6 m), but also the “road bed” or “ballast bed” (having a width of 4 m).

This interpretation is in accordance with Wikipedia which states that according to Network Rail, the “track bed” includes the layers of ballast and sub-ballast above a prepared sub-grade/formation (see attached sheet).

Because of the claimed arrangement, according to which the lifting devices are anchored directly to the track bed, the train car, when entering the terminal, travels across the lifting devices. Thus, the lifting devices are located underneath the train car. This is disclosed for the walking beams in paragraph [0108] of the published Application. Especially, it is disclosed that the car travels across walking beams which are located in their home position in the roadway.

Claims 1-25, 45-49, 123 and 124 have been rejected as being obvious and, therefore, unpatentable on the basis of the primary U.S. Patent No. 4,522,526 to Ringer in view or when combined with the secondary U.S. Patent No. 4,049,135 to Glassmeyer in further combination with either one of the U.S. Patent No. 4,715,766 to Gebhardt or Japanese Publication No. JP 59-194938 to Tanabe, for reasons set forth in paragraph 6 of the Office Action. The Examiner has indicated, on the top of page 4 of the Office Action, that the aforementioned rejection is predicated on the assumption that the lifting devices being anchored directly to the track bed is not meant to preclude the lifting devices from being anchored to the ground adjacent to the rails. In paragraph 7 of the Office Action the Examiner has addressed applicant's argument filed on June 23, 2010 and the Interview on May 17, 2010, discussing the rejection and the applied references. The Examiner has confirmed the initial agreement that claiming the attachment of the lifting devices to the track bed as being a direct and permanent attachment would define over the Ringer reference. However, evidently, the Examiner suggests that he did not recognize the significance of the distinction between the *two species of lifting devices* and whether or not the claim language was intended to cover both. For reasons discussed above, there is no significance to the distinction between these two species as there is no practical distinction. Both species or both embodiments of the lifting devices are now specifically and clearly defined in the amended claims to require that they be directly anchored, and

therefore permanently attached, to the portion of the track bed adjacent to each rail but beyond the inter-rail track bed portion between the tracks. In view of this, applicant hereby incorporates by reference the remarks and arguments submitted in the previously amendment filed on June 23, 2010 and, particularly, the arguments as they relate to the applied references of Ringer, Glassmeyer, Tanabe and Gebhardt that appear on pages 40-42 of the last filed response.

According to the above interpretation of the “track bed”, none of the cited references discloses lifting devices that are anchored directly to the track bed of the rail tracks because the lifting devices of the cited references are located too far away from the rails and thus outside or beyond what a person skilled in the art would consider to be a track bed. Furthermore, none of the lifting devices is located underneath the train car, when the train car enters the terminal, as would be the case when the lifting devices are adjacent or in close proximity to the tracks. In addition the rail tracks on which the lifting devices of Ringer are travelling are not the rail tracks on which the train cars are travelling, as claimed in the independent claims. These are additional rail tracks, which are foreseen only for the lifting devices.

By locating the lifting devices adjacent to but beyond the inter-rail track portion, the train car when entering the terminal, travels across the lifting devices. None of the applied art teaches or suggests such an arrangement.

In view of the disclosure as filed, it is clear that since the lifting devices are anchored directly to the track bed (outside or beyond the inter-rail bed portion) there are generally permanently secured in positions, as noted, below the train cars when passing over the lifting devices.

In view of the foregoing, it is respectfully submitted that neither Ringer nor the secondary references teach or even remotely suggest the subject invention as defined in

the claims of record. Nor do the references suggest or set forth any motivation for combining the four (4) references as proposed by the Examiner. Such proposed combination is clearly based on hindsight reconstruction based on the subject application and the teachings contained therein. Such hindsight reconstruction is clearly prohibited. Reconsideration and withdrawal of the prior art rejections is, accordingly, respectfully requested.

If the Examiner determines that some additional changes need to be made to place the application in condition for allowance, a telephone call to the undersigned attorney would be appreciated.

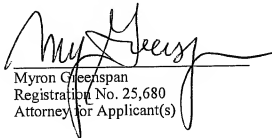
If the Examiner maintains the outstanding rejection, it is respectfully requested that the amendment nevertheless be entered for purposes of appeal.

This application is now believed to be in condition for allowance. Early allowance and issuance is, accordingly, is respectfully solicited.

Applicant hereby any fee necessary for the consideration of this Amendment or to prevent abandonment of this application, to be charged to Deposit Account No. 10-0100.

Date: 9/7/11

Respectfully submitted,


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